IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 867 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHELABHAI SONDABHAI RABARI

Versus

LALJIBHAI TEJAJIBHAI DRIVER

Appearance:

1. First Appeal No. 867 of 1983

MR KIRTIDEV R DAVE for Appellant No.

MR RAJNI H MEHTA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. The appellant herein met with a vehicular accident on 16th December, 1978, at about 8.00 P.M., while he was riding motor-cycle bearing registration No.GTJ 2092 on Limbdi-Wadhwan road. According to the

appellant, he was riding the motor-cycle on the left hand side of the road at a moderate speed when Jeep bearing No.GTF 9350, driven by respondent No.1, came from opposite direction and dashed against his motor-cycle. In the mishap, the appellant as well as the pillion rider both were thrown off the motor-cycle and the appellant sustained injuries in the form of fracture resulting into 40% permanent partial disability on left lower limb. The appellant claimed an amount of Rs.30,000/- by way of compensation. The Motor Accident Claims Tribunal (Aux.), at Surendranagar, by its judgment and award dated 24th December, 1981, held that the appellant was entitled to compensation of Rs.24,000/- on account of injuries sustained by him. However, the Tribunal also concluded that, in the accident, the appellant had contributed to the extent of 75% by way of negligence and, as such, he would be entitled to recover compensation of Rs.6000/- only with interest at the rate of 6% per annum thereon and proportionate costs from the respondents. Being aggrieved by the said judgment and award, the original claimant has preferred the present appeal.

2. Heard Learned Advocate, Mr. K.R. Dave, for the appellant and learned Advocate, Mr. R.H. Mehta, for the respondents.

3. Learned Advocate, Mr. Dave, submitted that the appellant does not dispute the quantum of compensation assessed and awarded by the Tribunal, but the challenge is to the finding on contributory negligence aspect.

3.1 Mr. Dave submitted that the appellant was driving a smaller vehicle, namely, a motor-cycle, whereas opponent No.1 was driving a jeep car and, therefore, a greater degree of care, caution and diligence would be expected from driver of a heavier vehicle, which aspect has not been considered by the Tribunal. Mr. Dave submitted that the right hand side headlight of the jeep car was not working, which created an impression for the oncoming vehicle, during night, that another two wheeler is approaching from opposite direction and this has resulted into the accident. Mr. Dave submitted that the Tribunal ought to have held that the accident is the outcome of sole negligence on the part of the driver of the jeep car or, in the alternative, the Tribunal ought to have held that the driver of the jeep car contributed to a greater extent to the mishap.

4. Learned Advocate, Mr. Mehta, submitted that the evidence, if examinted, it would be clear that the appellant himself is solely responsible for the mishap.

The accident has occurred on the extreme wrong side of the road, if one looks at the direction in which the motor-cycle was going. The damage to the jeep car is on the left hand side and hardly three and a half feet of Kutcha road was left on the left side of the jeep car. Contrary to this, a space of about 15 feet was open for the motor-cycle to proceed, if the motor-cycle had proceeded on its correct side. Under the circumstances, the decision arrived at by the Tribunal is just, proper and legal and may not be interfered with.

5. This Court has examined the evidence led before the Tribunal. Both the drivers have asserted that they were proceeding on the correct side. The appellant had asserted that the right side headlight of the jeep car was not working whereas the respondent has asserted that the both the sides have contributed to the same and, as such, in the case, his evidence is in the form of word against word. However, the principle of res ipso locutor can aptly be applied to the facts of the present case. If the Panchnama of the place of incident is seen, there is hardly anything left to be imagined to ascertain as to how the accident might have occurred.

6. The Panchnama indicates that, at the time of the accident, the jeep car was on its extreme left side of the road leaving only three and a half feet Kutcha road open to its left, whereas about fifteen and a half feet of road was open to the right hand side of the jeep car. It is not in dispute that both the vehicles were coming from opposite directions and, as such, if the motor-cycle had remained on the correct side, it could have passed without colliding with the jeep car through the fifteen and a half feet width of open space of the road. The Panchnama also indicates that the collusion had caused damage to the left front portion of the jeep car. This would clearly mean that the motor-cycle had gone on its wrong side and collided with the jeep car. There is absolutely no evidence to indicate any unforeseen, unexpected contingency to have arisen, which may have resulted into the motor-cycle going on its extreme wrong side and, therefore, in the opinion of this Court, with whatever degree of care, caution and diligence, the driver of the jeep car could not have anticipated the motor-cyclists to take the motor-cycle on extreme wrong side without any reason.

7. Learned Advocate, Mr. Dave, placed reliance on a decision in the case of Kusumkunverba, wd/o Narpatsinh Ramsinh Zala v. Umarbhai Kamaluddin Sipoy, reported in XXII GLR,910. However, it may be noted that no absolute

proposition of law is laid down to support the appellant's case. The decision is rendered in facts and circumstances of that case and, as such, it cannot help the appellant.

8. In view of the above factual scenario emerging from the evidence on record, there is hardly any scope for intereference by this Court in exercise of its appellate jurisdiction. It may be noted that the Tribunal has taken into consideration all these relevant aspects while arriving at a conclusion that the appellant had contributed to an extent of 75% of negligence in the accident and, therefore, the appeal is found to be devoid of merits. The same must fail and is dismissed. No costs.

[A. L. DAVE, J.]
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